UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,958	08/21/2003	Carey W. Smith	42P16159	3005

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EXAMINER
CHO, HONG SOL

ART UNIT	PAPER NUMBER
2619	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/646,958	SMITH, CAREY W.
Office Action Summary	Examiner	Art Unit	
	HONG CHO	2619	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>27 May 2008</u>.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1,6-8,13-15 and 20-25</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1, 6-8, 13-15 and 20-25</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a) ☐ All   b) ☐ Some * c) ☐ None of:

   1. ☐ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____.

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   This office action is in response to the amendment filed on 05/27/2008. Claims 2-5, 9-12

and 16-19 were canceled. Claims 1, 6-8, 13-15 and 20-25 are present in the instant

application.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth
in section 102 of this title, if the differences between the subject matter sought to be patented and the prior
art are such that the subject matter as a whole would have been obvious at the time the invention was made
to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
negatived by the manner in which the invention was made.

3.   Claims 1, 6-8, 13-15 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Araujo et al (US 6108350), hereinafter referred to as Araujo, in view of Milbrandt

(US 6631120) and further in view of Oshins et al (US 6108350), hereinafter referred to as

Oshins.

          Re claims 1, 8, 15, 22 and 25, Araujo discloses a central office (*a second node*,

figure 1a, element 130) negotiating with customer premises equipment (CPE) including

an ADSL modem (*a first node*, figure 1, element 110) to use a cell-based protocol

(determining one or more communication protocols via which a second node is capable

of communicating with the first node based upon one or more parameters received from

the second node during an initialization of communication between the first node and the

second node, column 5, lines 30-40). Araujo discloses implementing cell-based protocol

(ATM protocol) stack after negotiating between the customer premises equipment and

the central office such that the cell-based protocol is used on the link (*selecting second*

drivers to implement a second communication protocol if the one or more parameters

specify the second communication protocol, column 5, lines 50-53). Araujo fails to

disclose selecting first drivers to implement an Ethernet protocol if the one or more

parameters specify the first communication protocol. Milbrandt discloses a

communication device supporting an Ethernet protocol (column 5, line 3). It would have

been obvious to one having ordinary skill in the art at the time the invention was made to

modify the system of Araujo by adding to it Ethernet protocol stack as suggested by

Milbrandt for the benefit of conforming to widely used data link layer protocol, Ethernet.

Araujo and Milbrandt fail to disclose invoking a plug and play (PnP) protocol manager to

initiate loading of the one or more drivers into memory. Oshins discloses a PnP manager

to load a device driver into memory (column 6, lines 50-52). It would have been obvious

to one having ordinary skill in the art at the time the invention was made to modify the

system of Araujo with the teaching of Oshins for the benefit of loading of appropriate

drivers by the PnP manager determining which drivers are required to support a particular

functional unit and the loading of those drivers.

Re claims 6, 13 and 20, Araujo discloses customer premises equipment with an ADSL modem driver to be utilized for selection protocol stack (*the first node comprises at least one modem driver and the determining is performed, at least in part, by the at least one modem driver*, figure 1a, element 118).

Re claims 7, 14 and 21, Araujo discloses a central office negotiating with customer premises equipment to use a cell-based protocol (*initialization of the communication comprises a negotiation between the first node and the second node; and in response at least in part to a request from the first node, the second node transmits during the negotiation the at least one parameter to the first node*, column 5, lines 30-40).

Re claims 22- 24, Araujo discloses the CPE (*the first node*) including a personal computer (PC) with a circuit board that includes a circuit card slot that is coupling a circuit card to the circuit board which is required to use one of protocol stacks (column 5, lines 44-51). Araujo implicitly discloses a PC with a circuit board comprising a bus and a host processor coupled to the bus; and when the circuit card with a DSL modem is coupled to the slot, the circuitry is coupled to the bus.

Response to Arguments

4.   Applicant's arguments filed on 5/27/2008 have been fully considered but they are not persuasive.

On page 9 of the Remarks, the applicant argues that nowhere in Araujo, Milbrandt and Oshins each fail to disclose or suggest a process of a PnP protocol manager loading into memory a first driver to implement an Ethernet protocol or a second driver to implement an Asynchronous Transfer Mode protocol. The examiner respectfully disagrees. Araujo discloses implementing ATM protocol stack, Milbrandt discloses implementing Ethernet protocol stack and Oshins discloses utilizing a PnP protocol to load drivers into memory. In this case, it is the combined teaching of Araujo, Milbrandt and Oshins that meets all claim limitations.

The applicant further argues that neither Araujo nor Milbrandt discloses a concept of using software drivers to implement particular protocols. In reply, it is required to use software drivers to implement an Ethernet protocol or ATM protocol stack in Araujo and Milbrandt since a program or protocol stack requires a software driver to initiate execution of the program or protocol stack.

On page 10 of the Remarks, the applicant argues neither Araujo, Milbrandt nor Oskins disclose or suggest a circuit board that includes a circuit card slot that is capable of coupling a circuit card to a circuit board. In reply, Araujo discloses the CPE (*the first node*) including a personal computer (PC) necessarily with a circuit board that includes a circuit card slot that is coupling a circuit card to the circuit board which is required to use one of protocol stacks (column 5, lines 44-51).

Therefore, the Examiner concludes that the rejection of claims stands.

Conclusion

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no, however, event will the statutory period for reply expire later than

SIX MONTHS from the mailing date of this final action.

6.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Hong Cho whose telephone number is 571-272-3087.

The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

/Hong Cho/

Hong Cho
Patent Examiner
6/26/2008